IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2342 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKOR KARUJI ALUJI - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MS SADHANA SAGAR for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 05/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgment and order dated 15th November, 2006 passed by the learned Addl. Sessions Judge & Presiding Officer, Fast Track Court No. 2, Mehsana in Sessions Case No. 92 of 2006 whereby, the appellant was convicted for offence punishable u/s. 302 of the Indian Penal Code, 1860 [for short, "the I.P.C."] and sentenced to undergo imprisonment for life with fine of Rs.200/- and in default of payment of fine, simple imprisonment for a further period of one month. The appellant was given the benefit of set-off.

2.0 The brief facts of the prosecution case are as under ;

2.1 On 26.04.2006 the deceased, who was earning his livelihood by working as a Driver, had gone to Dakor in order to collect an amount of Rs.7,000/- from one Bhuriben – the wife of the appellant herein, to whom he had lent the said amount about a period of eight months back. At around 2.45 p.m., the deceased reached the factory where said Bhuriben was working. At that time, the appellant – husband of said Bhuriben, who was standing in front of the main gate of the factory, asked the appellant as to

why he had come to meet Bhuriben. As the appellant was having doubts about their relationship, he got enraged against the deceased and started hurling him abuses and in the process inflicted several knife blows on the body of the deceased.

2.2 On hearing the shouts of the deceased, the wife of the appellant – Bhuriben came out of the factory and reached the scene of offence. On noticing the deceased lying in a badly bruised condition, she along with some other persons, took the deceased to Civil Hospital, Mehsana. During the course of treatment, the deceased narrated the history of the incident to the Medical Officer, who was discharging his duties at the relevant point of time. The said Doctor telephonically informed about the incident to the police officials of Mehsana Taluka Police Station. The police officials of Mehsana Taluka Police Station reached the Civil Hospital, Mehsana and recorded the complaint of the deceased, which was later registered as I – C.R. No. 132 of 2006 for the offences punishable u/s. 307 of I.P.C. and Section 135 of the Bombay Police Act.

2.3 In the meanwhile, as the condition of the deceased had started deteriorating, he was shifted to Civil Hospital at Ahmedabad. A 'yadi' was sent to the Executive Magistrate, Ahmedabad through Shahibaug Police Station for the purpose of recording the Dying Declaration of the deceased. Accordingly, the Dying Declaration of the deceased was recorded by the Executive Magistrate, Ahmedabad. Further investigation was carried out and statements of several witnesses were recorded. On 28.04.2006 the appellant was arrested and sent to judicial custody.

2.4 During the course of interrogation, as the appellant showed his willingness to produce the knife used in the commission of the offence, 'Panchnama' to that effect was prepared in the presence of 'Panchas'. Thereafter, the weapon – knife was seized as a 'muddamal' article. The clothes worn by the appellant were also seized by way of a separate 'Panchnama'.

2.5 On 05.05.2006 the deceased succumbed to his injuries and, therefore, the Investigating Officer sent a report to the learned Judicial Magistrate, First Class, Mehsana for the addition of

Section 302 of the I.P.C. in the complaint. Inquest 'Panchnama' was drawn in the presence of 'Panchas'. 'Marrnottar' form was filled-up and necessary arrangements were made for the purpose of sending the dead body for post-mortem examination. The clothes worn by the deceased were also seized by way of a separate 'Panchnama'. The 'muddammal' articles, including the clothes of the appellant as well as deceased seized by way of separate 'Panchnamas', were sent to F.S.L. along with forwarding letter. After receipt of the F.S.L. Report, PM Note and the Medical Report, they were kept along with the investigation papers.

2.6 On completion of the investigation, charge-sheet was filed against the appellant in the Court of learned Judicial Magistrate, First Class, Mehsana. As the case was exclusively triable by the Court of Sessions, the learned J.M.F.C., Mehsana committed the case to the Sessions Court, Mehsana which was numbered as Sessions Case No. 92 of 2006. The case was then transferred to the Court of learned Addl. Sessions Judge & Presiding Officer for disposal on merits. On production of the appellant, the learned Addl. Sessions Judge framed the charge

and as the appellant pleaded not guilty to the said charge, trial was conducted against the appellant.

3.0 The prosecution has examined in all twelve witnesses in order to prove the guilt against the appellant. PW – 1 Dr. Tushar Mohanbhai Setalvad at Exhibit – 7, PW – 2 Dr. Hareshbhai Shaileshbhai Patel at Exhibit – 9, PW – 3 Indravirsinh Vajubha Jhala at Exhibit – 13, PW – 4 Bhuriben Dungarji Thakor at Exhibit – 18, PW – 5 Yavarhusain Nadirkhan Patel at Exhibit – 19, PW – 6 Dr. Mahesh Chimanlal Sutaria at Exhibit – 25, PW – 7 Dineshbhai Kevaldas Patel at Exhibit – 38, PW – 8 Khodaji Aluji Thakor at Exhibit – 40, PW – 9 Muljibhai Khushalbhai Parmar at Exhibit – 41, PW – 10 Udaysinh Sartansinh Thakor at Exhibit – 42, PW – 11 Lalji Maganji Thakor at Exhibit – 47 and PW – 12 Keshavji Govindbhai Sardava at Exhibit – 49.

3.1 The prosecution has also relied upon several documentary evidences, and more particularly, the evidence in the form of complaint at Exhibit – 48, Dying Declaration at Exhibit – 15, the medical case papers of the deceased at Civil Hospital,

Ahmedabad at Exhibit – 27, the Post-mortem Report at Exhibit – 10 and the F.S.L. Report at Exhibit – 28.

3.2 On submission of the closing 'purshis', the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and order and convicted the appellant for the offence as narrated in the earlier part of this judgment. Hence, the present appeal.

4.0 When the matter came up for admission hearing, Ms. Sadhana Sagar learned Advocate for the appellant was granted liberty to go through the Records & Proceedings available with the Court with a view to protect the interest of the appellant. Accordingly, the matter was adjourned on the earlier date. Ultimately, the matter was finally heard today.

4.1 Ms. Sadhana Sagar learned Advocate for the appellant has contented that there is no direct evidence on record to connect

the appellant with the crime in question inasmuch there are no eye-witnesses to the said incident. She has submitted that even if it is believed that the injuries in question were inflicted by the appellant, then also the same was an act of self-defence and that there was no motive behind the same. Therefore, the appellant ought not to have been convicted for offence u/s. 302 of the I.P.C. and that even if the appellant is found guilty, he could be convicted only for the offence u/s. 304-II of I.P.C.

4.2 Learned Advocate has contented that the Executive Magistrate has not followed the procedure prescribed by law while recording the Dying Declaration of the deceased. She has submitted that in the evidence led by the Executive Magistrate at Exhibit – 13, the Executive Magistrate himself has stated that he had not obtained any “endorsement” from the concerned Medical Officer as regards the condition of the deceased to depose, prior to or after recording the Dying Declaration and, therefore, his evidence could not be relied upon. She has further submitted that the prosecution has not examined one 'Geetaben' whose reference has been made in the Dying Declaration of the deceased. She has,

therefore, submitted that the prosecution case suffers from many irregularities and, hence, the appellant is required to be acquitted from the alleged offence by granting him the benefit of doubt.

4.3 Learned Advocate has contented that the cause of death as narrated by the Doctor who had conducted the post-mortem of the deceased is "*septicemia*" and not on account of the injuries sustained by the infliction of the knife blows. She has, therefore, submitted that the medical evidence on record also does not support the case of the prosecution and that the appellant has been falsely implicated in the crime in question.

5.0 We have heard learned Advocate for the appellant and perused the oral as well as documentary evidence on record as shown to us by the learned counsel for the appellant. A contention has been raised that the Dying Declaration of the deceased is not reliable since it has not been recorded in accordance with the procedure prescribed by law. It may be noted that after the incident in question, PW – 4, i.e. the wife of the appellant and some other persons took the deceased to Civil Hospital, Mehsana for giving

necessary medical treatment. At Civil Hospital, Mehsana the deceased narrated the history of the incident to the Medical Officer who was on duty at the relevant point of time. Thereafter, on intimation of the said Medical Officer, the P.S.I. of Mehsana Taluka Police Station reached the Civil Hospital, Mehsana and after making necessary enquiry from the concerned Doctor with regard to the condition & ability of the deceased to depose, the complaint of the deceased was recorded, which is at Exhibit – 48. In the said complaint also, the deceased made all averments with respect to the incident in question.

5.1 It may be noted that under this complaint at Exhibit – 48, the Medical Officer has put his endorsement with respect to the condition & ability of the deceased to depose. The said Doctor has been examined as PW – 1 at Exhibit – 7 while the P.S.I. who has recorded the complaint at Exhibit – 48 has been examined as PW – 11 at Exhibit – 47. Later, as the condition of the deceased had started deteriorating, he was shifted to Civil Hospital at Ahmedabad for further treatment. At Civil Hospital, Ahmedabad also, the deceased narrated the history of the incident to the

Medical Officer who was on duty at the relevant point of time. The said Doctor has been examined as PW – 2 at Exhibit – 9. The medical case papers of the deceased with regard to the treatment given to him at Civil Hospital, Ahmedabad have been produced at Exhibit – 27.

5.2 Thus, before all these witnesses, viz. PW – 1, PW – 2 & PW – 11, the deceased has categorically narrated about the history of the incident, which firmly leads us to believe that the deceased was in a fully conscious state of mind while making the averments. The history given before the two Doctors fully support the averments made in the complaint at Exhibit – 48, as also the Dying Declaration recorded by the Executive Magistrate at Exhibit – 15 *in toto*. Hence, it could be concluded that the Dying Declaration is trustworthy and free from all doubts. It is well-settled law that if the Dying Declaration is found to be reliable and trustworthy, then conviction could be based on it, without any corroboration.

5.3 In the present case, we find the Dying Declaration to be

wholly trustworthy and free from all doubts. Thus, only on the ground that no 'endorsement' was taken before or after recording the Dying Declaration, it could not be said that the Dying Declaration is not reliable. From the depositions of PW – 1 at Exhibit – 7, PW – 2 at Exhibit – 9, PW – 11 at Exhibit – 47 and the documents at Exhibit – 27, it is clearly established that the deceased was fully conscious and, therefore, the Dying Declaration at Exhibit – 15 could be said to be reliable and trustworthy and requires no corroboration. Nothing incriminating has come on record from the depositions of these witnesses which may lead us to believe their evidence to be untrue. Thus, the contention raised by learned Advocate for the appellant that the Dying Declaration at Exhibit – 15 could not be relied upon deserves to be rejected.

6.0 From the evidence on record, it is established that the incident in question took place outside the factory where PW – 4, the wife of the appellant, was serving as a Workmen. In her deposition, she has categorically stated that on the date of the incident, while she had come out of the factory for the purpose of

drinking water, she felt that some quarrel was going on outside the premises of the factory and, therefore, she went out of the factory by jumping-off the compound wall, so as to view the same. On reaching outside, she noticed the deceased lying on the road in a badly bruised condition. She has further deposed that she was unaware as to who had inflicted the said blows to the deceased, as none was present at the scene of offence, at that point of time. When she went to the place where the deceased was lying, the deceased informed her that her husband, i.e. the appellant herein, had inflicted the said blows on him. Thereafter, she along with others, took the deceased to Civil Hospital, Mehsana for giving necessary medical treatment. Subsequently, as the condition of the deceased had deteriorated, he was shifted to Civil Hospital, Ahmedabad. She has further deposed that at Civil Hospital, Ahmedabad and she stayed in the said Hospital for a period of two days, so as to take care of the deceased.

6.1 From the deposition of this witness, it is proved that this witness was present in the factory on the date of the incident and that on noticing the deceased lying on the road in a badly bruised

condition, she, alongwith some other persons, took the deceased, firstly, to Mehsana Civil Hospital and, then, to Ahmedabad Civil Hospital.

7.0 The prosecution case is also supported by the evidence led by the Supervisor and Watchman of the factory where PW – 4 was working. Both these witnesses have been examined as PW – 7 at Exhibit – 38 and PW – 9 at Exhibit – 41 respectively.

7.1 In his deposition, PW – 7 has stated that on the date of the incident, PW – 9 informed him that a relative of PW – 4 had come to meet her and that PW – 4 was desirous to go out of the factory so as to meet the said relative. Accordingly, he granted permission to PW – 4 to go out of the factory. But, as PW – 4 was not having the necessary gate-pass, she was not permitted to go out from the main gate. However, PW – 4 went out by jumping-off from a subsidiary gate.

7.2 PW – 9, the Watchman of the factory, in his deposition has specifically stated that on the date of the incident, while PW –

4 was working in the factory, at that time, the appellant came to the factory and informed him that he wanted to meet his wife – Bhuriben. He has further deposed that at around 2.30 pm, the deceased also came to the factory and informed him that he wanted to meet Bhuriben. Thereafter, as per the rules of the factory, he informed PW – 7 about the same and, accordingly, PW – 4 was granted permission to go out of the factory. However, since PW – 4 was not having the necessary gate-pass, this witness did not permit her to go out of the factory. In the meanwhile, a scuffle took place between the appellant and the deceased, on account of which PW – 4 went out of the factory by jumping-off from another gate and reached the place where the said scuffle was taking place.

7.3 Thus, if we consider the evidence led by these two witnesses, it is clear that on the date of the incident, the appellant had gone to the factory where PW – 4 was working so as to meet her and that he had informed PW – 9 about the same. PW – 9, as per the rules of the factory, informed PW – 7 and, thereafter, PW – 4 was granted permission to go out of the factory. However, in the

meanwhile, since a scuffle took place between the appellant and the deceased who was also waiting to meet PW – 4 at that point of time, PW – 4 went out of the factory by jumping-off from another gate, as she was not permitted to go out of the factory through the main gate on account of non-availability of gate-pass. Thereafter, PW – 4 went to the place where the scuffle was going on and, later, she alongwith some other persons, took the deceased to Mehsana Civil Hospital for necessary treatment. Thus, the prosecution has been able to prove beyond doubt the presence of PW – 4 at the time of the incident and also that PW – 4 had taken the deceased to Mehsana Civil Hospital for necessary medical treatment.

8.0 Moreover, PW – 9 has also identified the appellant in the Court below as the person who had picked up a scuffle with the deceased on the date of the incident. Thus, from the evidence led by PW – 9, it is also proved that the appellant had committed the offence in question, which is also supported by the evidence of PW – 4, before whom the deceased had stated in clear terms that the said blows were inflicted by the appellant. Hence, even if PW – 4

has been declared as 'hostile', it is proved from the evidence on record that the appellant has inflicted the said blows on the deceased.

9.0 So far as the aspect of motive is concerned, it may be noted that in her deposition, PW – 4 has specifically deposed that she knew the deceased as he was engaged in the business of Insurance and that the deceased also used to regularly visit their house for that purpose. However, the appellant had doubts about her character on account of the said visits of the deceased and, therefore, quarrels used to take place between them. Ultimately, they started residing separately since last about six months prior to the date of incident. Thus, from the deposition of this witness, it is evident that the appellant had grudge against the deceased, which could be the motive behind the commission of the crime in question. Therefore, it cannot be said that there was no motive behind the commission of the crime in question.

10.0 The medical evidence on record also supports the case of the prosecution. It has been contented that the cause of death of

the deceased is '*septicemia*' and that it was not on account of the alleged injuries inflicted by the appellant by a knife. The post-mortem report of the deceased has been produced at Exhibit – 10. The said Report specifically states that the deceased has sustained more than ten serious injuries on his body which could be possible by a sharp-edged weapon like a knife. Looking to the entire medical evidence on record, it could be concluded that death was caused on account of the serious injuries sustained by the infliction of knife blows by the appellant which, ultimately, resulted to '*septicemia*'.

11.0 The report of the Forensic Science Laboratory also supports the case of the prosecution. From the said Report at Exhibit – 28, it is proved that the blood stains found on the clothes of the appellant worn by him at the relevant point of time as well as on the 'muddamal' – knife contained the same Blood Group as that of the deceased. Thus, the medical evidence on record in the form of Post-mortem Report at Exhibit – 10 and the Report of the F.S.L. at Exhibit – 28, clearly establish that the deceased died a homicidal death. The said aspect is also supported by the Inquest

'Panchnama' at Exhibit – 34. Since the said aspect was not disputed even before the Court below and before this Court, we are not discussing the same in detail in this appeal. Thus, the contention raised by learned Advocate for the appellant that the cause of death of the deceased was not on account of the injuries sustained by the infliction of knife blows deserves to be rejected.

12.0 In above view of the matter, we are of the considered opinion that the prosecution has succeeded in establishing the involvement of the appellant in the crime in question. The evidence on record in the form of the PM Report, the F.S.L. Report and the discovery 'Panchnama' also support the case of the prosecution. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, hence, find no reasons to interfere in this appeal.

13.0 In the result, the appeal is dismissed.

[R. P. Dholakia, J.] [K. S. Jhaveri, J.]

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